

REMARKS

Reconsideration of the application is respectfully requested.

Claims 1, 7, 13 and 15 have been amended. Claims 2-3, 6, 8, 12, 14 and 16 were previously cancelled. All amendments are fully supported by the original specification and drawings. No new matter has been added. Claims 1, 4-5, 7, 9-11, 13 and 15 remain pending.

DOUBLE PATENTING REJECTION

Claims 13 and 15 were provisionally rejected as being unpatentable over claim 1 of copending Application No. 10/550,925 on the ground of nonstatutory obviousness-type double patenting. Claims 13 and 15 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/550,925. The provisional rejection stated that although the conflicting claims were not identical, they were not patentably distinct from each other because they claimed essentially the same subject matter.

These claims recite a wireless mobile phone and method of operation in which the mobile phone operates in a first or a second mode depending on authentication of a user by comparison of a photograph taken on power-up to a reference photograph of an article/object. Applicants have amended claims 13 and 15 to clarify that the reference photograph is a photograph depicting a non-anatomical object or a photograph depicting an article. In addition, Applicants have also amended claims 13 and 15 to clarify that in a mode of operation following successful authentication of the user, the camera is operable to take an additional photograph.

In contrast, claim 1 of copending Application No. 10/550,925 recites an apparatus with an input mechanism configured to facilitate input of a fingerprint of a user. In this claim, the apparatus operates in a first or a second mode depending on authentication of a user by input of a fingerprint. Thus, claims 13 and 15 as amended recite subject matter patentably distinct (and teaches away) from the subject matter claimed in the cited copending application. However, should the Examiner maintain this rejection but find that the pending

claims of the current application are otherwise allowable, the Examiner is kindly requested to contact the undersigned for further discussion regarding a terminal disclaimer.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

In the Office Action, claims 1, 4-5, 7, 9-11, 13 and 15 were rejected under 35 U.S.C. § 103(a) over U.S. Pat. App. Pub. No. 2003/0129964 to Kohinata (“Kohinata”) in view of U.S. Patent No. 6,883,716 to De Jong (“De Jong”).

Applicants have amended claims 1, 7, 13 and 15 without prejudice in order to proceed to allowance. These amendments are supported at least in paragraphs [0026], [0027], [0045], [0046], and [0048]-[0051], and in Figures 2, 3, 4a, and 4b. Independent claim 1 has been amended to recite an apparatus comprising:

a plurality of components including a component to store a reference photograph, wherein the reference photograph is a photograph depicting an article;

a camera; and

operating logic configured to operate the components and the camera in a selected one of a first mode and a second mode based on authentication of the user, the operating logic further configured to

activate the camera to automatically take a first photograph in response to power-on or reset,

compare the first photograph to the stored reference photograph to authenticate the user,

determine whether the user is successfully authenticated based at least in part on said comparison of the first photograph to the reference photograph,

operate the components and the camera in the first mode, in response to successful authentication of the user, to allow a first set of functions to be made available, the first set of functions including operation of said camera to take a second photograph, and

operate the components and the camera in the second mode, in response to unsuccessful authentication of the user, to allow a second set of functions to be made

available, the second set of functions including fewer functions than the first set of functions.

Thus, as amended, claim 1 recites an apparatus with a camera that is activated on power-on to take a photograph, which is then compared to *a reference photograph depicting an article* in order to authenticate the user. A first set of functions is made available in response to successful authentication, and a smaller second set of functions is made available in response to unsuccessful authentication. The camera is operable in the first mode, after successful authentication of the user, to take a second photograph.

Kohinata does not teach or suggest these features.

Instead, Kohinata teaches a device with a temperature comparator unit 16 that monitors the temperature of the device and compares the determined temperature to threshold body temperatures of the user stored in memory. If the temperature sensing unit determines from this comparison that the device is being touched, the temperature sensing unit sends an instruction to a biodata obtaining unit 19. The biodata obtaining unit 19 “obtains the fingerprint or the finger data . . . upon receiving an instruction . . . issued by the temperature comparator unit . . .” (paragraph [0043]; see also paragraph [0038] and Fig. 1).

First, Kohinata does not teach “operating logic configured to . . . activate the camera to automatically take a first photograph in response to power-on or reset.” As described above, Kohinata discloses that the biodata obtaining unit images the user’s fingerprint in response to a command by the temperature comparator unit. The “authentication process” requires both the temperature comparison and the fingerprint imaging (see e.g. paragraph [0064], disclosing that adding temperature data to the conditions for obtaining fingerprint data prevents unauthorized identification using artificially reproduced fingerprints). At most, Kohinata teaches that the temperature is determined in response to manipulation of a power source button (paragraphs [0048] and [0073]) or in response to holding by the user after the phone has been left standing (paragraph [0049]). In either case, the imaging of the fingerprint occurs in response to the command from the temperature comparator unit, not in

response to power-on or reset. Therefore, Kohinata **teaches away** from “operating logic configured to . . . activate the camera to automatically take a first photograph in response to power-on or reset.”

On page 2 of the Advisory Action, the Examiner asserted paragraph [0049] and Figure 2 of Kohinata as teaching a “reset” of the phone. However, paragraph [0049] merely discloses that the temperature comparator unit determines by a sensed increase in temperature that the device is being held, and responds by issuing an instruction to the biodata obtaining unit as described above. Figure 2 also shows that after the power source circuit is closed, the temperature must be determined to be within the range of threshold temperatures before the fingerprint is obtained (at the command of the temperature comparator unit). Thus, as discussed above, Kohinata does not teach “operating logic configured to . . . activate the camera to automatically take a first photograph in response to power-on or reset.”

Next, Kohinata does not teach or suggest “the operating logic further configured to . . . operate the components and the camera in the first mode, in response to successful authentication of the user, to allow a first set of functions to be made available, the first set of functions including operation of said camera to take a second photograph.” On the contrary, the fingerprint imager of Kohinata is solely for user authentication. See e.g. paragraph [0031] describing biodata obtaining unit 19 as a “personal authentication module” and paragraph [0043] disclosing biodata obtaining unit 19 as a “dedicated device for imaging the fingerprint.” Obtained fingerprint data can be registered or erased after authentication of the user (paragraph [0045]), but no additional operation of the biodata obtaining unit 19 in the “authentication completed” state is taught or suggested. In fact, Kohinata **teaches away** from such operation by disclosing that, to conserve power, the authentication operation “is not effected again” in the authentication completed state (paragraph [0053], also [0063] and [0083]).

Finally, Applicants respectfully maintain that the disclosure of fingerprint imaging by Kohinata does not teach or suggest a photograph depicting an “article,” a “non-anatomical object” or a “manufactured article.”

Therefore, for at least the above reasons, Kohinata does not teach or suggest the recitations of amended claim 1.

De Jong cannot remedy the deficiencies of Kohinata. De Jong merely teaches a smart card that includes an image of a user's face, with additional information hidden in the image.

First, De Jong does not teach a camera. Thus, De Jong does not teach or suggest "operating logic configured to . . . activate the camera to automatically take a first photograph in response to power-on or reset" or "the operating logic further configured to . . . operate the components and the camera in the first mode, in response to successful authentication of the user, to allow a first set of functions to be made available, the first set of functions including operation of said camera to take a second photograph."

In addition, De Jong fails to teach or suggest a photograph depicting an "article," a "non-anatomical object" or a "manufactured article." At most, like Kohinata, De Jong merely teaches an image of an anatomical feature.

For at least the above reasons, the cited combination of Kohinata and De Jong fails to teach or suggest every element of claim 1 as amended. Claim 1 is therefore allowable over the cited references.

Claims 7, 13 and 15 have been amended to include recitations substantially similar to those of amended claim 1. Therefore, for at least the same reasons, claims 7, 13 and 15 are also allowable over the cited references.

Claims 4-5 and 9-11 depend from claims 1 and 7, respectively, incorporating the recitations of the base claims. Therefore, for at least the same reasons, claims 4-5 and 9-11 are also allowable over the cited references.

Applicants respectfully submit that all pending claims are in condition for allowance. Withdrawal of the rejections and allowance of the claims is therefore requested.

CONCLUSION

In view of the foregoing, notice of allowance is solicited. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 381-8819. If any fees are due in connection with filing this paper, the Commissioner is authorized to charge the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 50-0393.

Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT, P.C.

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